

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JEROME SHAW,

Defendant.

No. 16-cr-00642 (RJS)

ORDER

RICHARD J. SULLIVAN, Circuit Judge:

The Court is in receipt of a letter from Defendant Jerome Shaw, proceeding pro se, requesting an extension of time in which to file a petition for habeas corpus relief pursuant 28 U.S.C. § 2255. (Letter, Doc. 78.) Shaw asserts that the extension is necessary in light of the increased restrictions instituted at his federal correctional facility in the wake of the COVID-19 pandemic. (*Id.*) Shaw was sentenced by this Court on May 22, 2018; his sentence was affirmed on appeal, and the Second Circuit’s mandate issued on November 21, 2019. (Summary Order, Doc. 77.)

“‘[A] federal court lacks jurisdiction to consider the timeliness of a § 2255 petition until a petition is actually filed.’” *Green v. United States*, 260 F.3d 78, 82 (2d Cir. 2001) (quoting *United States v. Leon*, 203 F.3d 162, 164 (2d Cir.2000) (per curiam)). “Prior to an actual filing, ‘there is no case or controversy to be heard, and any opinion we were to render on the timeliness issue would be merely advisory.’” *Green*, 260 F.3d at 82 (quoting *Leon*, 203 F.3d at 164). Accordingly, “a district court may grant an extension of time to file a motion pursuant to section 2255 only if (1) the moving party requests the extension upon or after filing an actual section 2255 motion, and (2) ‘rare and exceptional’ circumstances warrant equitably tolling the limitations period.” *Id.*

Here, Shaw has not yet filed a section 2255 petition with this Court. Nor does Shaw's Letter contain "allegations sufficient to support a claim under section 2255," such that the Court may "treat that motion as a substantive motion for relief under section 2255." *Id.* at 83. If or when Shaw chooses to file a section 2255 petition, the Court may then consider the timeliness of his petition in an adversarial context. Until then, the Court lacks jurisdiction to consider Shaw's request. *See Leon*, 203 F.3d at 164.

Accordingly, Shaw's request for an extension of time in which to file his habeas petition is respectfully DENIED. The Clerk of Court is respectfully directed to mail a copy of this order to Defendant Shaw.

SO ORDERED.

Dated: September 27, 2021
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation